IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11356 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PINTU NANDBIHARI GUPTA
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MS BANNA DUTTA for MR AR SHAIKH for Petitioner.
RULE SERVED for Respondent(s) : 1 - 2.
MR ND GOHIL, AGP for Respondent No. 3.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 12/07/2006

ORAL JUDGMENT

By filing this petition, the petitioner, who is detained under provisions of Prevention of Anti Social Activities Act (“PASA” for short), has challenged his detention order dated 16-2-2006, by which he is detained as a “dangerous person” under PASA. Along with the order of

detention, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference to five criminal cases pending against the petitioner. All these cases are registered against the petitioner under Sections 447, 379, 454, 457, 380 and 114 of the Indian Penal Code. It is alleged that the petitioner is committing theft of various articles like car tape, spare parts of aluminium machinery, VCD etc., and because of his activity, the public order is disturbed. The detaining authority also recorded the statements of witnesses, whose names have not been disclosed. After arriving at subjective satisfaction, the detaining authority has passed the order of detention against the petitioner.

Ms.Banna Dutta, learned advocate for the petitioner submitted that the petitioner was already in judicial custody at the time when the order of detention was passed against him. Learned advocate for the petitioner further submitted that the detaining authority has not given any reasons as to on what basis and material it has come to the conclusion that the petitioner may move an application for bail at any point of time and after being released on bail, he may continue with the same activities. She further submitted that the detaining authority has stated that the petitioner will be granted bail on presentation of bail application, as if the bail is granted in a routine manner. Therefore, on this ground order of detention passed against the petitioner is required to be quashed and set aside. In this connection, learned advocate for the petitioner has relied upon a recent decision of the Honourable Supreme Court in the case of **T.V. SRAVANAN vs. STATE** reported in (2006) 2 SCC 664. In the said judgment, the Honourable Supreme Court has held as under in paragraphs 13 and 14:

> "13. A somewhat similar reasoning was adopted by the detaining authority in Rajesh Gulati v. Govt. of NCT of Delhi.

This Court noticing the facts of the case observed: (SCC pp. 133-134, para 13).

> ""13. In this case, the detaining authority's satisfaction consisted of two parts – one: that the appellant was likely to be released on bail and two: that after he was so released the appellant would indulge in smuggling activities. The detaining authority noted that the appellant was in custody when the order of detention was passed. But the detaining authority said that 'bail is normally granted in such cases'. When in fact the five applications filed by the appellant for bail had been rejected by the courts (indicating that this was not a 'normal' case), on what material did the detaining authority conclude that there was 'imminent possibility' that the appellant would come out on bail? The fact that the appellant was subsequently released on bail by the High Court could not have been foretold. As matters in fact stood when the order of detention was passed, the 'normal' rule of release on bail had not been followed by the courts and it could not have been relied on by the detaining authority to be satisfied that the appellant would be released on bail. (See in this context Ramesh Yadav v. District Magistrate, Etah, AIR at p. 316).""

14. We are satisfied that for the same reasons the order of detention cannot be upheld in this case. The bail applications moved by the appellant had been rejected by the courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The 'imminent possibility' of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority o n the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, not sufficient compliance with the requirements as laid down by this Court. These are the reasons for which while allowing the appeal we directed the release of the appellant by order dated 13.12.2005."

In my view, considering the nature of cases pending against the petitioner, it cannot be said that the Magistrate will grant bail in a routine manner, especially when there is no material available for coming to the conclusion that on presentation of bail application, bail will be granted to the petitioner. Considering the fact that there is nothing on the record to suggest as to on what basis the detaining authority has come to a conclusion that the petitioner is likely to be granted bail on presentation of the bail application, this petition is required to be allowed.

For the foregoing reasons, the petition is allowed. Order of detention dated 16-2-2006 is quashed and set aside. Petitioner – Pintu Nandbihari Gupta is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P. B. MAJMUDAR, J.)

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